

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to waivers and petitions

The Plumbing and Mechanical Systems Board hereby amends Chapter 30, “Continuing Education for Plumbing and Mechanical Systems Professionals,” Chapter 31, “Plumbing and Mechanical Systems Board—Waivers or Variances from Administrative Rules,” and Chapter 36, “Plumbing and Mechanical Systems Board—Petitions for Rule Making,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 105.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 105 and 272C and chapter 17A as amended by 2020 Iowa Acts, House File 2389.

Purpose and Summary

These amendments largely make changes across several chapters of the Iowa Administrative Code that are necessary to comply with and implement 2020 Iowa Acts, House File 2389. House File 2389 removed the term “variance” in relation to the phrase “waiver or variance.” House File 2389 also clarified how and when to notify the Administrative Code Editor and Administrative Rules Coordinator of waivers.

The amendment in Item 1 clarifies that a continuing education course cannot be repeated for credit in the same renewal period.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 18, 2020, as **ARC 5278C**. The Department received five public comments. Two commenters fully supported the proposed amendments. One commenter wanted clarification on the proposed amendments, which was provided. One commenter provided comments irrelevant to the proposed amendments. One commenter questioned whether the same CEU course could be repeated if the licensee was attempting to reinstate a lapsed license. The Board’s response to the last commenter is that the same CEU course cannot be repeated in the same renewal period even if a licensee is reinstating a lapsed license. Licensees will have the option to submit a waiver request if this presents a hardship due to the lack of available CEU courses.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on January 26, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to the Board's waiver provisions contained in 641—Chapter 31.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on March 31, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 30.2(4) as follows:

30.2(4) It is ~~the~~ each licensee's responsibility of ~~each licensee~~ to maintain a record of all continuing education courses attended and retain proof of compliance with the continuing education requirements. Licensees may attend a continuing education course more than once during a continuing education compliance period. However, licensees who attend a course more than once may not count the approved hours for that course toward the applicable continuing education requirement more than once during the continuing education compliance period.

ITEM 2. Amend **641—Chapter 31**, title, as follows:

PLUMBING AND MECHANICAL SYSTEMS BOARD—~~WAIVERS OR VARIANCES FROM~~
ADMINISTRATIVE RULES

ITEM 3. Amend rule 641—31.1(17A,105,272C) as follows:

641—31.1(17A,105,272C) Definitions. For purposes of this chapter:

“Board” means the Iowa plumbing and mechanical systems board.

“~~Waiver or variance~~” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a waiver and a variance.~~

ITEM 4. Amend rule **641—31.4(17A,105,272C)**, catchwords, as follows:

641—31.4(17A,105,272C) Criteria for ~~waiver or variance~~.

ITEM 5. Amend rule 641—31.5(17A,105,272C) as follows:

641—31.5(17A,105,272C) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

31.5(1) License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question and submitted to the ~~board administrator~~ board's executive officer.

31.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case, and submitted to the ~~board administrator~~ board's executive officer.

31.5(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's ~~administrator~~ executive officer.

ITEM 6. Amend rule 641—31.12(17A,105,272C) as follows:

641—31.12(17A,105,272C) Summary reports Reports to administrative code editor and administrative rules coordinator. ~~Semiannually~~ Within 60 days after granting or denying a petition for waiver, the board shall ~~prepare a summary report identifying the~~ submit the information described in this rule, which may be encompassed by the board's written decision on the petition for waiver, to the administrative code editor and the administrative rules coordinator through the Internet site established under Iowa Code section 17A.9A(4):

31.12(1) The rule or rules for which a waiver has been sought;

31.12(2) Whether the waiver was granted or denied;

31.12(3) The number of times a waiver was granted or denied for each rule;

31.12(4) A citation to the statutory provisions implemented by these rules, and a for which waiver was sought;

31.12(5) A general summary of the reasons justifying the board's action on the waiver requests; request; and

31.12(6) If both applicable and practicable, the report shall detail information detailing the extent to which the granting of a waiver has established a precedent for additional waivers and affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

ITEM 7. Amend rule 641—36.4(17A) as follows:

641—36.4(17A) Board consideration.

36.4(1) *Information considered.* ~~Within 14 days after the filing of a petition, the board must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee.~~ Upon request by the petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. Any person may submit comments to the board on the substance of the petition. The board may also solicit comments from any person on the substance of the petition. ~~Also, comments on the substance of the petition may be submitted to the board by any person.~~

36.4(2) *Time for decision.* Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

36.4(3) *Denial on the basis of form is without prejudice.* Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

36.4(4) *Notification to administrative rules coordinator and administrative rules review committee.* Within 14 days after the filing of a petition, the board must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Within 14 days after granting or denying a petition, the board must notify the administrative rules coordinator and the administrative rules review committee of the disposition of the petition.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/24/21.